

APPENDIX B

ENVIRONMENTAL QUALITY REVIEW

Chapter 15

ENVIRONMENTAL QUALITY REVIEW AMENDMENT

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[HISTORY: Adopted by the Board of Trustees of the Village of Sag Harbor 4-1-86 as Local Law No. 2, 1986. Amendments noted where applicable.]

GENERAL REFERENCES

Land and beach use - See Ch. 27.
Subdivision of land - See Ch. 16.
Zoning - See Ch 33.

§15-1.1 SAG HARBOR CODE § 15-1.5

ARTICLE 1
General Provisions

§ 15-1.1. Title.

This Chapter shall be known and may be cited as the "Environmental Quality Review Code of the Village of Sag Harbor."

§ 15-1.2. Purpose.

The purpose of this Chapter is to implement for the Village of Sag Harbor, the provisions of the State Environmental Quality Review Act, ~~and the Waterfront Revitalization of Coastal Areas and Inland Waterways Act~~, thereby incorporating environmental factors and ~~consideration of coastal resources~~ into existing planning and decision-making processes.

§ 15-1.3. Statutory authority.

This Chapter is adopted under authority of the Municipal Home Rule Law, the State Environmental Quality Review Act, ~~and the State Environmental Quality Review Regulations, and Article 42 of the Executive Law.~~

§ 15-1.4. Applicability.

All boards, departments, offices, other bodies or officers of the Village of Sag Harbor must comply with the State Environmental Quality Review Act, the State Environmental Quality Review Regulations and this Chapter to the extent applicable, prior to carrying out, approving or funding any action other than an exempt, excluded or Type II action as those terms are defined in Part 617 of Title 6 of the New York Codes, Rules and Regulations: listed in the "Waterfront Consistency Review Local Law of the Village of Sag Harbor."

§ 15-1.5. Definitions; word usage.

A. As used in this Chapter, the following terms shall have the meanings indicated:

ACTIONS - Include:

§ 15-1.5 ENVIRONMENTAL QUALITY REVIEW § 15-1.5

~~(1) Projects or physical activities, such as construction or other activities, which change the use or appearance~~

of any natural resource or structure, which:

- ~~—— (a) —— Are directly undertaken by an agency;~~
- ~~—— (b) —— Involve funding by an agency; or~~
- ~~—— (c) —— Require one (1) or more permits or approvals from an agency or agencies.~~
- ~~(2) —— Planning activities of an agency that commit the agency to a course of future decisions.~~
- ~~(3) —— Agency rules, regulations, procedures and policy making.~~
- ~~(4) —— Combinations of the above.~~

~~CONSISTENT TO THE MAXIMUM EXTENT PRACTICABLE - The action will not substantially hinder the achievement of any of the policies and purposes of the approved local waterfront revitalization program for the Village of Sag Harbor (LWRP) and, whenever practicable, will advance one (1) or more of such policies. If the action will substantially hinder the achievement of any policy or purpose of the LWRP, the agency shall instead find that the following three (3) requirements are satisfied: no reasonable alternatives exist which would permit the action to be taken in a manner which would not substantially hinder the achievement of such policy or purposes; the action taken will minimize all adverse effects on the local policy and purposes to the maximum extent practicable; and, the action will result in an overriding village, regional, or statewide public benefit. Such a finding shall constitute a determination of "consistent to the maximum extent practicable."~~

EAF - Environmental Assessment Form.

EIS - Environmental impact statement.

LEAD AGENCY - The agency principally responsible for carrying out, funding or approving an action and therefore responsible for determining whether an EIS is required in connection with the action and for causing the preparation and filing of the EIS if one is required. An agency proposing to take an action which does not involve any other agency shall be the "lead agency."

LOCAL WATERFRONT REVITALIZATION AREA (LWRA) - That portion of the New York State coastal area within the Village of Sag Harbor as delineated in the Village of Sag Harbor Local Waterfront Revitalization Program.

LOCAL WATERFRONT REVITALIZATION PROGRAM (LWRP) - The local program as approved by the Secretary of State pursuant to the Waterfront Revitalization and Coastal Resources Act (Executive Law, Article 42). The Local Waterfront Revitalization

Program of the Village of Sag Harbor, approved by the Secretary of State pursuant to the Waterfront Revitalization and Coastal Resources Act (Executive Law, Article 42), a copy of which is on file in the Office of the Clerk of the Village of Sag Harbor.

§15-1.5 SAG HARBOR CODE § 15-2.1

STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA) - Article 8 of the Environmental Conservation Law.

STATE ENVIRONMENTAL QUALITY REVIEW - [6 NYCRR PART 617] - Part 617 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

TYPE I ACTION - Includes all those listed in Section 12 of Part 617 and all critical areas of environmental concern hereafter designated by the Village Board pursuant to the authority and procedures of Subdivision 4(j) of Part 617. In addition, any action occurring within five hundred (500) feet of the mean high-water level of any tidal waters within the village shall be considered a "Type I action." In addition, a fast-food eating establishment shall be considered a "Type I action." [Amended 11-20-1996 by L.L. No. 15, 1986; 9-3-1991 by L.L. No. 8, 1991] An action or class of actions identified in section 617.4 of Part 617, or any involved agency's procedures adopted pursuant to section 617.14 of Part 617.

TYPE II ACTION - Includes all those actions listed in Section 13 of Part 617. In addition, based on the criteria in Part 617, minor subdivisions are deemed "Typed II actions," except those minor subdivisions which would constitute Type I actions, those minor subdivisions located in the LWRA, and those minor subdivisions located in the Historic District. An action or class of actions identified in section 617.5 of Part 617. When the term is applied in reference to an individual agency's authority to review or approve a particular proposed project or action, it shall also mean an action or class of actions identified as Type II actions in that agency's own procedures to implement SEQRA adopted pursuant to section 617.14 of Part 617. The fact that an action is identified as a Type II action in any agency's procedures does not mean that it must be treated as a Type II action by any other involved agency not identifying it as a Type II action in its procedures.

UNLISTED ACTION - All actions not listed as a Type I as defined in Section 15-1.5 of this local law, and not an Exempt, Excluded or Type II action as those terms are defined in 6 NYCRR, Part 617, or Type II action as defined in Section 15-1.5 of this local law, or, in the case of a particular agency action, not identified as Type I or Type II action in the agency's own SEQRA procedures.

VILLAGE - The Village of Sag Harbor.

VILLAGE BOARD - The Board of Trustees of the Village of Sag Harbor.

- B. All other terms for which definitions are given in SEQRA and/or Part 617 shall have the same meaning in this Chapter.

ARTICLE II

Environmental Review Procedures

§ 15-2.1. Initial review.

In complying with the initial review requirements of Section 5 of Part 617 617.6, the Village Clerk, or in the absence of the Village Clerk such other person as the Village Clerk shall designate, shall:

- A. Advise each applicant when an application is involved, and each board, department, office, other body or officer whether a proposed action is subject to the provisions of SEQRA and this Chapter.

§ 15-2.1 ENVIRONMENTAL QUALITY REVIEW § 15-2.3

- B. Determine whether a proposed Type I or unlisted action would be located within the LWRA.
- C. Provide applicants, boards, departments, offices, other body or officers with the appropriate assessment forms pursuant to § 15-2.2 of this Chapter.

§ 15-2.2. Environmental and Coastal Assessment Forms.

- A. When any board, department office, other body or officer of the village contemplates directly carrying out, funding or approving any Type I action, a full Environmental Assessment Form (EAF) must be prepared by it or on its behalf. When an unlisted action is contemplated, either a full or short-form EAF, as appropriate, may be prepared. The EAF form given in Appendices A and B of Part 617 will be used as models but may be modified to meet the needs of particular cases. However, the final scope of such a modified EAF must be at least as comprehensive as the scope of the model forms.
- B. When any persons submits an application for funding or a permit or other approval of a Type I or unlisted action to any board, department, office, other body or officer of the village, an EAF must accompany the application. For Type I actions,

a full EAF must be prepared; for unlisted actions, either the full EAF or the short-form may be used as appropriate. An applicant may choose to prepare a draft EIS in place of an EAF.

- C. The ~~CAF and any full EAF, short-form EAF or~~ draft environmental impact statement submitted with reference to any Type I or unlisted action located in the LWRA shall address the question of the proposed action's consistency with the policies, ~~purposes and projects of the LWRP policy standards.~~

§ 15-2.3. Determination of significance.

- A. The lead agency must make a determination of environmental significance of the action. This determination must be based on the full or short-form EAF, as the case may be, and on such other information as the lead agency may require. The criteria stated in Section 117 of Part 617 and the LWRP policy standards ~~policies, purposes and projects~~ must also be considered by the lead agency in making its determination of significance.
- B. The determination must be made ~~within fifteen (15)~~ 20 calendar days of the date of the lead agency designation, or within ~~fifteen (15)~~ 20 calendar days of its receipt of all information required by the lead agency to make the determination, whichever is later.
- C. Whenever a proposed action is located in the LWRA, any lead agency other than the Village Planning Board shall, before determining the significance of the proposed action, solicit and consider the recommendation of the Village Planning Board with reference to the consistency of the proposed action with the policies, ~~purposes and projects of the LWRP policy standards.~~ A copy of any such recommendation shall be immediately transmitted to the Village Board.
- D. If the lead agency makes a determination of non-significance, decision-making on the action shall proceed with regard only to §§ 15-2.5 and 15-2.6 of this Chapter.
- E. If the lead agency makes a determination that the action may have a significant effect on the environment, an environmental impact statement will be required and the provisions of § 15-2.4

§15-2.3 SAG HARBOR CODE § 15-2.5

through 15-2.6 of this Chapter shall apply.

§ 15-2.4. Environmental impact statement.

- A. EIS preparation and procedures.

- (1) When required pursuant to § 15-2.3 of this cChapter, an EIS must be prepared in accordance with:
 - (a) The environmental impact statement procedures as provided under Section ~~89~~ of Part 617, and the requirements for preparation and content of environmental impact statements as provided under ~~same~~ Section ~~149~~ of Part 617.
 - (b) When the EIS is prepared for a proposed action located within the LWRA, it must also contain an identification of the applicable LWRP policy standards ~~policies and purposes of the Village of Sag Harbor LWRP~~ and a discussion of the effects of the proposed action on such ~~policies and purposes~~ policy standards.

B. Fees for review and preparation of an EIS.

- (1) The fees for review or preparations of an EIS involving approval or funding of an action will be fixed from time to time by resolution of the Village Board.
- (2) Fees so fixed will be consistent with the limitations set by Section ~~1713~~ of Part 617. When the EIS is prepared by the applicant, fees will reflect actual expenses of reviewing it. When the EIS is prepared by an agency on behalf of the applicant, fees will reflect the cost of preparation, including publication of notices, but not the cost of environmental review by the agency. However, the lead agency may not charge a fee for its determination of significance.

C. Decisions and findings for actions subject to an EIS.

Decision-making and findings for any proposed action which is the subject of a final EIS shall be made by each board, department, office, other body or officer of the village contemplating such action, in accordance with the provisions of Section ~~911~~ of Part 617 and § 15-2.6 of this cChapter, regardless of whether or not it is the lead agency.

§ 15-2.5. Notices and filing.

All notices, EAF's, draft EIS's, and other SEQRA documents shall be prepared, filled, circulated and made available to prescribed under section ~~1012~~ of Part 617 and this cChapter.

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~~§ 15-2.6. Consistency:~~

- ~~A. Action to be undertaken within the LWRA shall be consistent to the maximum extent practicable with the policies and purposes of the LWRP. For the purposes complying with this requirement, boards, departments, offices, other bodies or officers of the village shall meet the requirements of Subsections A(1) or (2) of this section, whichever applies where a determination is made pursuant to:~~
- ~~(1) Section 15-2.3 E of this chapter that an action may have a significant effect on the environment: the consistency of such action with the LWRP shall be determined as part of the EIS procedure cited in § 15-2.4 of this chapter.~~
 - ~~(2) Section 15-2.3D of this chapter that an action will not have a significant effect on the environment: the consistency of such action with the LWRP shall be determined subsequent to the determination of nonsignificance.~~
- ~~B. If it is determined, pursuant to § 15-2.6A of this chapter, that the action would cause a substantial hindrance to the achievement of any policy or purpose of the LWRP, such action shall not be undertaken unless the board, department, office, other body or officer can document with findings that:~~
- ~~(1) No reasonable alternatives exist which would permit the action to be undertaken without substantial hindrance to such policy or purpose.~~
 - ~~(2) The action would be undertaken in a in a manner which will minimize all adverse effects on such policy or purpose to the maximum extent practicable.~~
 - ~~(3) The action will result in an overriding village, regional or statewide public benefit.~~
- ~~C. Each board, department, office, other body or officer of the village shall maintain a file for each action made the subject of a consistency determination, including any recommendation received from the Village Planning Board and any findings pursuant to § 15-2.6B of this chapter. Such files shall be made available for public inspection upon request.~~
- ~~D. Coastal Policies: Actions to be undertaken within the LWRA shall be evaluated for consistency in accordance with the following LWRP policy standards and conditions, which are derived from and further explained and described in Section III of the Village of Sag Harbor LWRP, a copy of which is on file in the Village Clerk's office and available for inspection during normal business hours. Agencies which directly undertake actions shall also consult with Section IV of the LWRP in making their consistency determination. The action shall be consistent with the policy to:~~
- ~~1. Revitalize and redevelop deteriorating institutional, commercial and residential structures (Policy 1):~~
 - ~~2. Retain and promote recreational water-dependent uses (Policy 2):~~
 - ~~3. Ensure that development occurs where adequate public infrastructure is available to reduce health and pollution hazards (Policy 5):~~

§15-2.6 SAG HARBOR CODE § 15-2.6

§ 15-2.6 ENVIRONMENTAL QUALITY REVIEW § 15-2.6

§15-2.6 SAG HARBOR CODE § 15-2.6

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WETLANDS

ARTICLE I

Findings and Intent NEW LOCAL LAW

- 1.1 Legislative Intent.**
- 1.2 Title.**
- 1.3 Definitions.**
- 1.4 Regulated activities; exceptions.**
- 1.5 Work releases.**
- 1.6 Application for permits.**
- 1.7 Additional application requirements.**
- 1.8 Granting, denying or limiting of major projects; referral to Harbor Committee.**
- 1.9 Granting, denying or limiting of minor projects.**
- 1.10 Permit requirements, major and minor projects.**
- 1.11 Building Permit.**
- 1.12 Fee.**
- 1.13 Jurisdiction of other agencies.**
- 1.14 Penalties for offenses; corrective action.**

1.1. Legislative Intent.

The Board of Trustees of the Village of Sag Harbor finds that growth of population and attendant development have placed increasing demands upon natural resources, which have the potential to encroach upon, despoil, pollute or eliminate many of the wetlands of the Village.

Brackish, freshwater and tidal wetlands are important natural resources in the Village of Sag Harbor. If preserved, these wetlands constitute vital physical, economic, social, historic, archeological, aesthetic, recreational and ecological assets to present and future residents of the Village. They provide many beneficial functions, including natural flood and stormwater control, groundwater recharge, natural pollution treatment, erosion and sediment control, wildlife habitat creation, open space and aesthetic appreciation, educational opportunities, as well as means to protect subsurface water resources.

Because all wetlands are presumed to be of importance, it is hereby declared that the regulation of their use and management is essential to the health, safety, economic and general welfare of the citizens of the Village. It is hereby declared to be the policy of the Village of Sag Harbor to:

- 1. protect and preserve these wetlands with the valuable attributes and functions they possess;

2. prevent the despoliation and destruction of these wetlands whenever practicable;
3. protect the surface and ground water resources against misuse; and
4. regulate the use and development of these wetlands thereby securing their natural benefits for the present and future residents of the Village of Sag Harbor.

This Chapter shall apply to all lands defined as wetlands, to any activity in an adjacent area (as defined herein) of a wetland, or to any activity that has the potential to adversely impact wetlands.

1.2. Title.

This Chapter shall be known as and may be cited as the "Wetlands Law."

1.3 Definitions.

The following terms, phrases or words and their derivations shall have the meanings given herein:

ADJACENT AREA - The adjacent area shall extend 150 feet landward of and parallel to the wetland boundary and shall be subject to the regulations for wetlands.

APPLICANT - Any individual(s), vendee, firm, partnership, association, corporation, company, organization or other legal entity of any kind, including municipal corporations, governmental agencies or subdivisions thereof, filing an application pursuant to this Chapter.

BOARD OF TRUSTEES - The Board of Trustees of the Village of Sag Harbor.

BOUNDARY OF A WETLAND - The landward limit of wetlands as specified in the definitions of "brackish wetlands", "freshwater wetlands" and "tidal wetlands" below.

BRACKISH WETLANDS - The lands and waters in the Village of Sag Harbor (including, but not limited to, wetlands as shown on the wetlands map, prepared by K. Blumer (May 1994) for the Village of Sag Harbor) which are flooded by tides for varying periods depending on elevation and tidal amplitude, and which contain a mixture of fresh and saline water.

Any of the following wetland plants may be included: salt hay cordgrass (*Spartina patens*), spikegrass (*Distichlis spicata*), black grass (*Juncus gerardi*), alkaligrass (*Puccinellia spp.*), baltic rush (*Juncus balticus*), black needlerush (*Juncus roemerianus*), glassworts (*Salicornia spp.*), sea ox-eye (*Borrchia frutescens*), high-tide bush (*Iva frutescens*), reed (*Phragmites australis*), bulrushes (*Scirpus spp.*), asters (*Aster spp.*), switchgrass (*Panicum virgatum*), big cordgrass (*Spartina cynosuroides*), narrow-leaved cattail (*Typha angustifolia*), pickerelweed (*Pontederia cordata*), wild rice (*Zizania*

aquatica), giant cutgrass (*Zizaniopsis miliacea*), marsh mallow (*Hibiscus moscheutos*), arrowheads (*Sagittaria spp.*), smartweeds (*Polygonum spp.*), sedges (*Carex spp.*), beggar's-ticks (*Bidens spp.*).

DEPOSIT - To fill, place, inject or dump any liquid, solid or gaseous material, or the act thereof, but not including stormwater.

DOCK, PIER, WHARF - Any permanent or seasonal structure, except a building, located or proposed to be located on lands abutting or comprised of freshwater or tidal wetlands or connected to a bulkhead or the upland and extending over the water's surface, designed to secure vessels and provide access from the shore to a body of water. For the purpose of this chapter, these terms shall also include the associated structures necessary to cross wetlands and adjacent natural areas. The term "dock" includes the terms "wharves", "piers", "fixed docks", "floating docks", or "floats".

DREDGING - The removal or excavation of any sand, gravel, aggregate, soil, mud, or sediment from the land lying beneath any waterway or contiguous to any waterway within the jurisdiction of the Village of Sag Harbor.

FLOATING HOME - Any vessel in fact used, designed or occupied as a dwelling unit, business office or source of any occupation or for any private or social club of whatsoever nature, including but not limited to a structure constructed upon a barge primarily immobile and out of navigation which functions substantially as a land structure while the same is moored or docked within the harbor management area of the Village of Sag Harbor, whether such vessel is self-propelled or not.

FRESHWATER WETLANDS. The lands and waters in the Village of Sag Harbor (including, but not limited to, wetlands as shown on the Freshwater Wetlands Map, prepared by or for the State of New York pursuant to subdivision 24-0301 of the New York State Freshwater Wetlands Act and filed with the Suffolk County Clerk), which contain any or all of the following:

A. Lands and submerged lands, commonly called marshes, swamps, sloughs, bogs, flats, streambanks, riverine systems, and the like, supporting aquatic life or semiaquatic vegetation of the following vegetative types:

- (1) wetland trees, which depend upon seasonal or permanent flooding or sufficiently water-logged soils to give them a competitive advantage over other trees; including, among others, red maple (*Acer rubrum*), willows (*Salix spp.*), black spruce (*Picea mariana*), swamp white oak (*Quercus bicolor*), red ash (*Fraxinus pennsylvanica*), black ash (*Fraxinus nigra*), silver maple (*Acer saccharinum*), American elm (*Ulmus americana*), and Larch (*Larix laricina*);

(2) wetland shrubs, which depend upon seasonal or permanent flooding or sufficiently water-logged soils to give them a competitive advantage over other shrubs; including, among others, alder (*Alnus spp.*), buttonbush (*Cephalanthus occidentalis*), bog rosemary (*Andromeda glaucophylla*), dogwoods (*Cornus spp.*), and leatherleaf (*Chamaedaphne calyculata*);

(3) emergent vegetation, including, among others, cattails (*Typha spp.*), pickerelweed (*Pontederia cordata*), bulrushes (*Scirpus spp.*), arrow arum (*Peltandra virginica*), arrowheads (*Sagittaria spp.*), reed (*Phragmites australis*), wildrice (*Zizania aquatica*), bur-reeds (*Sparganium spp.*), purple loosestrife (*Lythrum salicaria*), swamp loosestrife (*Decodon verticillatus*), and water plantain (*Alisma plantago-aquatica*);

(4) rooted, floating-leaved vegetation; including, among others, waterlily (*Nymphaea odorata*), water shield (*Brasenia schreberi*), and spatterdock (*Nuphar spp.*);

(5) free-floating vegetation; including, among others, duckweed (*Lemna spp.*), big duckweed (*Spirodela polyrhiza*), and watermeal (*Wolffia spp.*);

(6) wet meadow vegetation, which depends upon seasonal or permanent flooding or sufficiently water-logged soils to give it a competitive advantage over other open land vegetation; including, among others, sedges (*Carex spp.*), rushes (*Juncus spp.*), cattails (*Typha spp.*), rice cut-grass (*Leersia oryzoides*), reed canary grass (*Phalaris arundinacea*), swamp loosestrife (*Decodon verticillatus*), and spikerush (*Eleocharis spp.*);

(7) bog mat vegetation; including, among others, sphagnum mosses (*Sphagnum spp.*), bog rosemary (*Andromeda glaucophylla*), leatherleaf (*Chamaedaphne calyculata*), pitcher plant (*Sarracenia purpurea*), and cranberries (*Vaccinium macrocarpon* and *V. oxycoccos*);

(8) submergent vegetation; including, among others, pondweeds (*Potamogeton spp.*), naiads (*Najas spp.*), bladderworts (*Utricularia spp.*), wild celery (*Vallisneria americana*), coontail (*Ceratophyllum demersum*), watermilfoils (*Myriophyllum spp.*), muskgrass (*Chara spp.*), stonewort (*Nitella spp.*), water weeds (*Elodea spp.*), and water smartweed (*Polygonum amphibium*).

B. Lands and submerged lands containing remnants of any vegetation that is not aquatic or semiaquatic that has died because of wet conditions over a sufficiently long period, provided that such wet conditions do not exceed a maximum seasonal water depth of six (6) feet, and provided further that such conditions can be expected to persist indefinitely, barring human intervention.

C. Lands and waters enclosed by aquatic or semiaquatic vegetation as set forth in Paragraph A above and dead vegetation as set forth in Paragraph B above, the regulation of which is necessary to protect and preserve the wetland.

D. Those geologic formations commonly known as perched ponds and kettle holes.

E. The waters overlying the areas set forth in Paragraphs A and B and the lands underlying Paragraph D above.

HARBOR COMMITTEE - The Harbor Committee of the Village of Sag Harbor established by Chapter 21 of the Village Code.

LANDS UNDERWATER - Those lands lying beneath or subject to immersion by fresh, brackish or saline water within the jurisdiction of the Village of Sag Harbor.

MAJOR PROJECT - Any regulated activity not specifically classified as a minor project shall be deemed a major project. Major projects shall include, but are not limited to, subdivisions, land division, site plans, new residential or commercial buildings and activities associated with a commercial enterprise, construction of docks wholly or partially within the boundaries of the Village of Sag Harbor, new bulkheads, dredging in excess of 100 cubic yards, and structural erosion control measures.

MINOR PROJECT - Any regulated activity listed herein: in-kind and in-place replacement of bulkheads, bulkhead refacing, placement of residential mooring piles, non-structural erosion control measures, dredging not to exceed 100 cubic yards, and construction of accessory structures to an existing residential building such as pools, decks, garages, tennis courts, sheds, and the like and any work done appurtenant to an existing residence such as clearing, filling, landscaping and regrading.

PERSON - See "applicant."

POLLUTION - The presence in the environment of human-induced conditions or contaminants in quantities or characteristics which are or may be injurious to human, plant or animal life or to property.

REMOVE - To dig, dredge, suck, bulldoze, dragline, blast or otherwise excavate or regrade substrate materials.

RESIDENTIAL HOUSEBOAT - A vessel not designed primarily for residential dwelling units, designed primarily for pleasure craft, recreation and for independent navigation and not considered a floating home, in accordance with the definition set forth above, and which is being used for residential purposes.

TIDAL WETLANDS - The lands and waters in the Village of Sag Harbor (including but not limited to those lands and waters in the Village which are included in the inventory of tidal wetlands prepared by or for the State of New York and filed with the Suffolk County Clerk, entitled "Tidal Wetlands Maps") which include any or all of the following:

- A. Those areas which border on or lie beneath tidal waters, such as but not limited to banks, bogs, salt marshes, swamps, meadows, flats or other low lands subject to tidal action, including those areas now or formerly connected to tidal waters.
- B. All banks, bogs, meadows, flats and tidal marshes subject to such tides and upon which grow or may grow some or any of the following: salt hay (*Spartina patens* and *Distichlis spicata*), black grass (*Juncus gerardi*), saltworts (*Salicornia spp.*), sea lavender (*Limonium carolinianum*), tall cordgrass (*Spartina pectinata* and *Spartina cynosuroides*), hightide bush (*Iva frutescens*), cattails (*Typha angustifolia* and *Typha latifolia*), groundsel (*Baccharis halimifolia*), marsh mallow (*Hybiscus palustris*), seaside goldenrod (*Solidago sempervirens*) and the intertidal zone including low marsh cordgrass (*Spartina alterniflora*).

WATERWAY - All waters within the municipal limits of the Village of Sag Harbor or otherwise subject to its jurisdiction.

WETLANDS - Those areas defined in this chapter as brackish, freshwater or tidal wetlands and their corresponding adjacent area.

WETLANDS PERMIT - That form of written Village approval required to conduct a regulated activity as specified under this Chapter, hereafter referred to as a permit.

1.4. Regulated activities; exceptions.

- A. **Permit required** - No person shall conduct or cause to be conducted any regulated activity within a brackish, freshwater or tidal wetland, or adjacent area as set forth in Subsection B and C of this section, without first obtaining a permit issued by the Village Board of Trustees.
- B. **Regulated activities** - Activities subject to regulation shall include any Major or Minor Project including, but not limited to:
 - 1. any form of drainage, dredging, excavation or removal of soil, mud, sand, shells, gravel, or other aggregate from any brackish, freshwater, or tidal wetland or land underwater within the boundaries of the Village of Sag Harbor;
 - 2. any direct or indirect dumping, filling or depositing of any soil, stones, sand, gravel, mud, rubbish or fill of any kind;
 - 3. constructing any structures, roads or bridges, clearing and regrading, or placing of bulkheads, retaining walls, pilings, catwalks or other physical improvements;

4. any form of pollution or discharge, including but not limited to, installing a sanitary sewage system, running a sewer outfall, discharging sewage treatment effluent, stormwater runoff or other liquid wastes, into or so as to drain into a brackish, freshwater or tidal wetland or adjacent area;
5. any grading activities, including but not limited to, clearing of vegetation, the alteration of existing land elevations and/or the alteration of natural drainage pattern;
6. construction of any pier or dock, or the mooring of a residential houseboat or floating home;
7. any mariculture or aquaculture activity;
8. any digging of canals, boat basins or ramps in any lands within village limits which will connect with bodies of salt water; and
9. any other activity which substantially impairs any of the several functions served by lands under water and/or brackish, freshwater or tidal wetlands or the benefits derived therefrom, which are set forth in Section 1.1 of this Chapter if they occur upon the wetland, waterway, adjacent area, or the lands underwater, or if they impinge upon or otherwise substantially affect the wetlands.

All activities occurring on a project site are subject to review by the Village Board of Trustees if any portion of the activity on a project property is subject to regulation.

- A. Subdivisions, site plans, land divisions - Any parcel of land which contains wetlands and is the subject of a subdivision application or site plan review requires a permit under this Chapter.
- B. Fishing, hunting and related activities - The deposition or removal of the natural products of lands underwater, brackish, freshwater, or tidal wetlands, by recreational or commercial fishing, shellfishing, hunting or trapping, shall be excluded from the regulated activities requiring a permit herein, where otherwise legally permitted and regulated.
- C. Suffolk County Department of Health Services - Public health activities of the Suffolk County Department of Health Services other than mosquito control activities shall be excluded from the regulated activities requiring a permit herein. All mosquito control projects shall be subject to review to determine whether they are having any adverse impacts on wetlands. The Village Clerk shall be notified by the Department of Health Services in writing two (2) weeks prior to the onset of any such activity. Such notification must include a complete project description and copies of any engineering plans.
- D. Highway Departments - Repair and maintenance activities of the Village of Sag Harbor Highway Department, Suffolk County Department of Public Works and the New York State Department of Transportation shall be excluded from the regulated activities requiring a permit herein.

1.5. Work releases.

- A. Emergency work which is deemed to be immediately necessary in order to protect public health and safety or to prevent significant damage to real property may be undertaken only upon issuance of an emergency work release by the Village Building Inspector. Said emergency work release shall be valid for no more than 30 calendar days and shall be undertaken pursuant to any conditions imposed by the Building Inspector.
- B. Maintenance or repair of existing structures or improved areas including but not limited to bridges, roads, highways, railroads beds, bulkheads, docks, piers, pilings or paved areas which does not involve expansion or substantial restoration, reconstruction, rehabilitation or modification, and will not result in any adverse impact upon a wetland may be excluded from the regulated activities requiring a permit and may be undertaken upon the issuance of a maintenance or repair work release. Any person wishing to conduct such maintenance or repair shall notify the Building Inspector of the planned activity in writing at least 2 weeks prior to the onset of such activity. Should it be deemed by the Building Inspector that the activity is not ordinary maintenance or repair or if the activity is deemed to have any adverse impacts on the wetlands, a permit may be required.

1.6. Application for permits.

- A. Any person proposing to conduct or cause to be conducted a regulated activity upon any wetland shall file a Permit application for the activity with the Village Board of Trustees, on prescribed application forms. Such application shall include:
 - 1. a statement of authority from the owner for any agent making application;
 - 2. a statement of proposed work and purpose thereof;
 - 3. a list of the names of the owners of record of lands and of known claimants of water rights as shown on the current Village of Sag Harbor assessment role, which relate to any land within two hundred (200) feet of the boundary of the property on which the proposed regulated activity will be located;
 - 4. project plans for the proposed site improvements, which shall be certified by an engineer, architect, land surveyor, or landscape architect licensed in the State of New York, drawn to scale no less detailed than one inch equals forty feet, or in a scale as required by Chapter 55. The following shall be indicated on the project plan:
 - a. the location of all wetlands on the project property as they existed no earlier than 12 months prior to the date of filing the application;
 - b. a description of the vegetative cover of the wetland and adjacent area, including dominant species;
 - c. a description of the soil types on-site;
 - d. location of the construction area and the associated area that may be disturbed during construction, and their relation to property lines, roads, buildings, and watercourses located within 250 feet of the project;

- e. the exact locations and specifications for all proposed drainage, fill, grading, dredging, and vegetation removal activities, and the procedures to be used;
 - f. existing and adjusted contours at 2-foot intervals for the proposed project area, and to a distance of 50 feet beyond;
 - g. details of any drainage system proposed both for the conduct of work, and after completion thereof, including locations of any point discharges, or other human-made conveyances which would discharge into the wetlands and measures proposed to control erosion both during and after work;
 - h. for properties located in a flood zone as defined by Chapter 55, Article XVII (Tidal Flood Hazard Overlay District) of the Village Code, the flood zone designation should be noted and if appropriate the boundary of the flood zone indicated; and
 - i. complete construction details prepared and certified by a licensed engineer or architect;
 - 5. a completed Full or Short Environmental Assessment Form as required pursuant to State Environmental Quality Review Act regulations at 6 NYCRR Part 617;
 - 6. copies of all applicable County, State, or federal permits or permit applications that are required for such work. The Village Board of Trustees shall determine the adequacy and completeness of the application.
- B. The applicant shall submit such further application requirements as specified by the Village Board of Trustees as are deemed necessary to effectuate the provisions and intent of this Chapter. The applicant may grant permission to physically inspect the subject parcel by personnel of the Village of Sag Harbor prior to, during and upon completion of the regulated activity. Furthermore, the applicant shall have the burden of demonstrating that the proposed activity will be in accordance with the policies and provisions of this Chapter.
- C. Withdrawal of application.
- 1. An application shall be deemed withdrawn in the following circumstances:
 - a. By the applicant upon the filing of a written request to withdraw at any time prior to the time the Village Board takes action on such application.
 - b. Upon the applicant failing to comply with a written request for additional information by the Village Board of Trustees within six (6) months of the date of such request.
 - c. Upon the applicant failing to supply the Village Building Inspector or the Village Board with a survey, written covenants or deeds and a title report within six months of the date of approval if covenants or deeds are imposed or required by the Village Board as a condition of receiving approval of a wetlands permit.
 - 2. The Village Board may extend such period of time for good cause upon written application.

3. A withdrawn application will be returned to the applicant. A resubmission of a withdrawn application shall be treated as a new application.

1.7 Additional application requirements.

All permit applicants shall submit to the Village Board of Trustees an affidavit signed by the owner of the project property which indemnifies and saves harmless the Village of Sag Harbor from any claims arising out of or connected with operations under the permit and from all acts, omission, commissions or negligence on the part of the applicant, his agents or employees, in such form as shall be approved by the Village Attorney.

1.8 Granting, denying or limiting of major projects; referral to Harbor Committee.

- A. The Village Board of Trustees shall notify the applicant in writing when the application is deemed complete.
- B. At this time, the Village Board shall also refer a copy of the completed application to the Harbor Committee to obtain its recommendation with respect to the proposed action. The Harbor Committee shall render its written recommendation to the Village Board within thirty (30) days following the Harbor Committee's receipt of the application. The recommendation shall indicate whether, in its opinion, the proposed action complies with the requirements of this Chapter, the Zoning Code and the policies of the Local Waterfront Revitalization Program. The Harbor Committee may make suggestions to the Village Board concerning modification of the proposed action to enable it to comply with applicable law. In the event that the Harbor Committee's recommendation is not forthcoming within the specified time, the Village Board shall make its decision without the benefit of the Harbor Committee's recommendation.
- C. No sooner than thirty (30) days and not later than sixty (60) days after the application is deemed complete, the Village Board shall authorize a public hearing on such application. The Village Board shall cause notice of such hearing to be published at least once in the official newspaper, not less than fourteen (14) days nor more than twenty-eight (28) days prior to the date set for the hearing.
- D. No later than five (5) days after being notified by the Village Board of Trustees that the application is complete, the applicant shall conspicuously place along each road frontage of the property which is the subject of the application, at least one (1) poster, as such form as shall be supplied. The Village Board of Trustees may require the use of a poster supplied by the Village at a fee set by the Village Board. Such posters shall contain the following information, printed in letters no less than two (2) inches high:
 - (1) A brief description of the proposed project as described in the application and approved by the Village Board of Trustees.

- (2) That any person interested in this application and who wishes to become a party of interest may contact the Village prior to the Village Board meeting.
- (3) That a public hearing will be held before the Village Board at a specified date, and the time and place with regard to the proposed hearing.

Said poster must remain, in a readable condition, in place until the public hearing has been completed and must be removed no later than seven (7) days thereafter.

- E. The applicant shall also notify all owners of record as shown on the current Village of Sag Harbor assessors roll of lands within 200 feet of the project property and known claimants to water rights, by registered or certified mail, not less than fifteen (15) days prior to the date set for the hearing.
- F. In granting, denying or limiting any permit application, the Village Board shall consider the functions of the wetlands and their role in the hydrologic and ecological system, the objectives set forth in Section 1.1 of this Chapter, any public comments timely received and whether the proposed activity will:
 1. Adversely affect water quality or marine life in wetland or natural vegetation areas.
 2. Preserve natural vegetation within twenty five (25) feet of mean high water or the upland edge of brackish, freshwater or tidal wetlands. Maintain natural undisturbed adjacent areas and, where necessary, provide supplemental planting of indigenous vegetation.
 3. Materially cause salt water intrusion into the fresh water table serving the Village of Sag Harbor.
 4. In addition to those setbacks required by Chapter 55 (Zoning) of the Village Code, provide adequate setbacks for development, and setback individual sewage disposal systems at least one hundred (100) feet away from wetlands to protect water quality and enhance natural systems.
 5. Materially contribute to erosion, turbidity or siltation. No activity or structure should weaken or undermine the shoreline or lateral support of other properties in the vicinity.
 6. Maximize setbacks for new construction in proximity to erosion-prone and erosion-sensitive areas. The activity must employ minimum structural measures to control shoreline erosion. Bulkheads or retaining walls should be located at or above mean high water.
 7. Minimize the visual impact of site development and provide sufficient visual buffering.
 8. Conform to the natural topography of the site during development in order to minimize the loss of natural vegetation, disturbance of soil, and habitats and associated environmental impacts.
 9. Minimize areas of fertilizer-dependent vegetation in order to reduce nitrogen and chemical loading to wetlands.

10. Prevent impacts associated with stormwater runoff during or after site development including any direct discharge of stormwater from the site onto wetlands, or onto adjacent properties and to employ structural and nonstructural measures to contain stormwater on site.
 11. Minimize adverse impacts associated with dredging and dredge spoil disposal and changes in bottom topography.
 12. Give preference to water-dependant activities that must have a shoreline, wetland, or waterway location in order to function.
- G. In granting or limiting a permit, the Village Board may impose conditions or limitations designed to carry out the intent of this Chapter, which shall be incorporated into the permit. If the proposed activity causes an unavoidable loss of wetlands, said impacts having been minimized to the extent practicable, the applicant shall develop a mitigation plan which shall specify mitigation measures that provide, by a multiple of three (3:1 ratio, 3 units gained for each unit lost), the replacement of the resources which are lost due to the proposed activity. If mitigation is required, the mitigation plan will be a condition of the permit and shall be completed prior to the expiration of the permit and be designed for the life of the permitted structure. Any wetland created pursuant to this provision shall be regulated under this Chapter.
- H. A notice duly filed in writing to the Village Board of Trustees indicating that New York State, Suffolk County or any other agency or subdivision thereof is in the process of acquiring by condemnation or negotiation any brackish, freshwater or tidal wetlands shall be sufficient basis for denying a permit for an activity proposed to be located on such wetland.
- I. Any decision by the Village Board to grant, deny, or place conditions upon a wetlands permit or to revoke or suspend any permit previously issued pursuant to this Chapter shall be supported by written findings giving the reason for such decisions.
- J. In the event that a court of competent jurisdiction finds the action reviewed constitutes a taking without just compensation, and the land so regulated merits protection under this Chapter, the court may, at the election of the Village Board, either (1) set aside the order or (ii) require the Village Board to proceed under the condemnation law to acquire the wetlands or such less than fee rights therein as have been taken.
- 1.9. Granting, denying or limiting of minor projects.**
- A. The Village Board of Trustees shall notify the applicant in writing when the application is deemed complete.
- B. Not later than sixty (60) days after the notice of complete application, the applicant shall notify all owners of record, as shown on the current assessment roll of the Village of Sag Harbor Assessor, of lands within 200 feet of the project property and known claimants to

water rights, by registered or certified mail, that written comments will be accepted by the Village Board of Trustees, for a period of not less than five (5) days and not later than twenty-one (21) days.

The Village Board shall cause notice of such application to be posted in a public location at Village Hall, advising that written comments will be accepted during the public comment period.

- C. Within thirty (30) days after the expiration of the public comment period, the Village Board of Trustees shall either grant the permit, deny the permit or grant the permit with conditions.
- D. In granting, denying or limiting any permit application, the Village Board of Trustees shall consider the functions of the wetlands and their role in the hydrologic and ecological system and evaluate the effect of the proposed activity with respect to the public health and welfare; fishing and shellfishing; flood, hurricane and storm dangers; water quality; loss of natural aesthetic values; and protection or enhancement of the several functions of wetlands and the benefits derived therefrom which are set forth in Section 1.1 of this Chapter. The Village Board of Trustees shall also consider all written comments received which were timely submitted.
- E. In granting or limiting a permit, the Village Board of Trustees may impose reasonable conditions or limitations designed to carry out the intent of this Chapter.

1.10. Permit requirements, major and minor projects.

- A. All permits shall be clearly posted on the project site during all work activities and all applicants, their agents, or construction crews proceeding with approved operations shall carry on their persons or have readily available the approved permit condition and shall show same to any authorized inspector of the Village of Sag Harbor whenever requested.
- B. The Village Board may revoke or suspend any permit where any conditions of the permit have not been complied with.
- C. All activities undertaken pursuant to a wetlands permit shall be completed within a period of two (2) years, except dredging permits, which shall, at the discretion of the Village Board, be in effect for a period of five (5) years. Notwithstanding the foregoing, in the event that the applicant has obtained a building permit for the work authorized by the wetlands and waterways permit, the time for completing a permitted activity shall expire simultaneously with the expiration of the building permit or any renewal thereof. In the event a wetlands permit expires by operation of this Section, the Village Board of Trustees may issue a renewal by resolution. In the event that the permit expires and work has not commenced, the Village Board may require a new application to be filed.

1.11. Building Permit.

- A. All buildings and structures shall, upon the issuance of a wetlands permit by the Village Board, also be required to receive a building permit from the Building Inspector.
- B. No structure or building erected or altered and regulated under this Chapter of the Sag Harbor Village Code, shall be used until a certificate of occupancy has been issued by the Building Inspector.

1.12. Fee.

The Village Board shall reserve the right to require an application fee for all permit applications as well as a permit or license fee for any operations or uses permitted pursuant to this Chapter. Such fees shall be set by resolution of the Village Board, and shall be collected by the Village Clerk.

1.13. Jurisdiction of other agencies.

A permit approved by the Village of Sag Harbor does not relieve the applicant of the necessity to obtain authorization or other permits from other agencies which have jurisdiction over the proposed project.

1.14. Penalties for offenses; corrective action.

- A. Administrative sanctions.
 - 1. Any person found violating any provision of this Chapter or the conditions imposed by the Village Board and/or the Building Inspector upon an approved permit may be served with a written notice by the Building Inspector requiring the activity be stopped and the appearance of such person at a hearing before the Village Board of Trustees. Such written notice shall be served at least ten (10) days prior to the hearing date by personal service or by registered or certified mail. The notice shall contain a specification of charges. No work shall resume until the Village Board of Trustees has determined that a violation does not exist.
 - 2. Following such hearing, the Village Board, upon the recommendation of the Building Inspector, shall have the power to assess a civil penalty not to exceed three thousand dollars (\$3,000.00) for every such violation. In addition, the Village Board shall have the power to direct the violator to satisfactorily restore the affected wetland to its condition prior to the violation, insofar as that is possible within a reasonable time and under the supervision of the Building Inspector.
 - 3. Any civil penalty or order issued by the Village shall be reviewable pursuant to the Civil Practice Law and Rules.

B. Criminal sanctions.

1. Any person who violates any provision of this Chapter or the conditions imposed by the Village Board, upon an approved permit shall, in addition, for the first offense, be guilty of a violation punishable by a fine of not less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1,000.00) and for a second and each subsequent offense be guilty of a misdemeanor punishable by a fine of not less than one thousand dollars (\$1,000.00) nor more than two thousand dollars (\$2,000.00) or a term of imprisonment of not less than fifteen (15) days nor more than six (6) months, or both.
2. In lieu of or addition to these punishment, any offender may be ordered by the court to restore the affected wetland to its condition prior to the offense. The court shall specify a reasonable time for the completion of such restoration, which shall be effected under the supervision of the Director.
3. Each offense shall be a separate and distinct offense, and, in the case of a continuing offense, each day's continuance thereof shall be deemed a separate and distinct offense.

C. Equitable relief. The Village of Sag Harbor shall have the right to seek equitable relief to restrain any violation or threatened violation of any of the provisions of this Chapter.

March 25, 1998

WATERFRONT CONSISTENCY REVIEW

NEW LOCAL LAW

Local Law No. _____ of the year 1998

Be it enacted by the Village Board of Trustees of the Village of Sag Harbor as follows:

GENERAL PROVISIONS

I. Title

This local law will be known as the Village of Sag Harbor Waterfront Consistency Review Law.

II. Authority and Purpose:

1. This Local Law is adopted under the authority of the Municipal Home Rule Law and the Waterfront Revitalization of Coastal Areas and Inland Waterways Act of the State of New York (Article 42 of the Executive Law).
2. The purpose of this Local Law is to provide a framework for agencies of the Village of Sag Harbor to consider the policies and purposes contained in the Local Waterfront Revitalization Program when reviewing applications for actions or direct agency actions located in the coastal area, and to assure that such actions and direct actions are consistent with the said policies and purposes.
3. It is the intention of the Village of Sag Harbor that the preservation, enhancement, and utilization of the natural and manmade resources of the unique coastal area of the Village take place in a coordinated and comprehensive manner to ensure a proper balance between natural resources and the need to accommodate economic development. Accordingly, this Local Law is intended to achieve such a balance, permitting the beneficial use of coastal resources while preventing: loss of estuarine resources and wildlife; diminution of open space areas or public accesses to the waterfront; erosion of shoreline; impairment of scenic beauty; losses due to flooding, erosion and sedimentation; or permanent adverse changes to ecological systems.
4. The substantive provisions of this Local Law shall only apply while there is in existence a Village Local Waterfront Revitalization Program which has been adopted in accordance with Article 42 of the Executive Law of the State of New York.

III. Definitions:

1. "Actions" mean either Type I or unlisted actions as defined in SEQRA regulations (6NYCRR617.2) which are undertaken by an agency and which include:

(1) projects or physical activities, such as construction or other activities that may affect the environment by changing the use, appearance or condition of any natural resource or structure, that:

- (i) are directly undertaken by an agency; or
- (ii) involve funding by an agency; or
- (iii) require one or more new or modified approvals from an agency or agencies;

(2) agency planning and policy-making activities that may affect the environment and commit the agency to a definite course of future decisions;

(3) adoption of agency rules, regulations and procedures, including local laws, codes, ordinances, executive orders and resolutions that may affect the environment; and

(4) any combinations of the above.

This law does not apply to excluded or exempt actions as defined in the SEQRA regulations 6NYCRR Part 617. The following Type II actions are not subject to review under this law:

- 1. maintenance or repair involving no substantial changes in an existing structure or facility;
- 2. agricultural farm management practices, including construction, maintenance and repair of farm buildings and structures, and land use changes consistent with generally accepted principles of farming;
- 3. repaving of existing highways not involving the addition of new travel lanes;
- 4. street openings and right-of-way openings for the purpose of repair or maintenance of existing utility facilities;
- 5. maintenance of existing landscaping or natural growth;
- 6. routine activities of educational institutions, including expansion of existing facilities by less than 10,000 square feet of gross floor area and school closings, but not changes in use related to such closings;
- 7. extension of utility distribution facilities, including gas, electric, telephone, cable, water and sewer connections to render service in approved subdivisions or in connection with any action on this list;
- 8. granting of individual setback and lot line variances;
- 9. granting of an area variance(s) for a single-family, two-family or three-family residence;

10. public or private best forest management (silvicultural) practices on less than 10 acres of land, but not including waste disposal, land clearing not directly related to forest management, clear-cutting or the application of herbicides or pesticides;
11. mapping of existing roads, streets, highways, natural resources, land uses and ownership patterns;
12. information collection including basic data collection and research, water quality and pollution studies, traffic counts, engineering studies, surveys, subsurface investigations and soils studies that do not commit the agency to undertake, fund or approve any Type I or Unlisted action;
13. official acts of a ministerial nature involving no exercise of discretion, including building permits and historic preservation permits where issuance is predicated solely on the applicant's compliance or noncompliance with the relevant local building or preservation code(s);
14. routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment;
15. conducting concurrent environmental, engineering, economic, feasibility and other studies and preliminary planning and budgetary processes necessary to the formulation of a proposal for action, provided those activities do not commit the agency to commence, engage in or approve such action;
16. collective bargaining activities;
17. investments by or on behalf of agencies or pension or retirement systems, or refinancing existing debt;
18. inspections and licensing activities relating to the qualifications of individuals or businesses to engage in their business or profession;
19. purchase or sale of furnishings, equipment or supplies, including surplus government property, other than the following: land, radioactive material, pesticides, herbicides, or other hazardous materials;
20. adoption of regulations, policies, procedures and local legislative decisions in connection with any action on this list;
21. engaging in review of any part of an application to determine compliance with technical requirements, provided that no such determination entitles or permits the project sponsor to commence the action unless and until all requirements of 6NYCRR, Part 617.5 have been fulfilled;
22. civil or criminal enforcement proceedings, whether administrative or judicial, including a particular course of action specifically required to be undertaken pursuant to a judgment or order, or the exercise of prosecutorial discretion;
23. adoption of a moratorium on land development or construction;
24. interpreting an existing code, rule or regulation;
25. designation of local landmarks or their inclusion within the historic district;

- and
26. emergency actions that are immediately necessary on a limited and temporary basis for the protection or preservation of life, health, property or natural resources, provided that such actions are directly related to the emergency and are performed to cause the least change or disturbance, practicable under the circumstances, to the environment. Any decision to fund, approve or directly undertake other activities after the emergency has expired is fully subject to the review procedures of 6NYCRR, Part 617.5.

2. **"Agency"** means any board, agency, department, office, other body, or officer of the Village of Sag Harbor.

3. **"Coastal area"** means that portion of New York State coastal waters and adjacent shorelands as defined in Article 42 of the Executive Law which is located within the boundaries of the Village of Sag Harbor, as shown on the Coastal Area map on file in the office of the Secretary of State and as delineated in the Village of Sag Harbor Local Waterfront Revitalization Program.

4. **"Coastal Assessment Form (CAF)"** means the form, contained in Appendix A, used by an agency to assist it in determining the consistency of an action with the Local Waterfront Revitalization Program.

5. **"Consistent"** means that the action will fully comply with the LWRP policy standards and conditions and, whenever practicable, will advance one or more of them.

6. **"Direct Actions"** mean actions planned and proposed for implementation by an agency, such as, but not limited to a capital project, rule making, procedure making and policy making.

7. **"Harbor Committee" or "Committee"** means the Harbor Committee of the Village of Sag Harbor, as established by Chapter 21 of the Village Code.

8. **"Local Waterfront Revitalization Program (LWRP)"** means the Local Waterfront Revitalization Program of the Village of Sag Harbor, approved by the Secretary of State pursuant to the Waterfront Revitalization and Coastal Resources Act (Executive Law, Article 42), a copy of which is on file in the Office of the Clerk of the Village of Sag Harbor.

IV. Harbor Committee:

1. The Committee is authorized to review and make recommendations to appropriate agencies regarding the consistency of proposed actions with the Village of Sag Harbor Local Waterfront Revitalization Program policy standards and conditions.

V. Review of Actions:

1. Whenever a proposed action is located in the Village's Coastal Area, an agency shall, prior to approving, funding or undertaking the action, make a determination that it is consistent with the LWRP policy standards and conditions set forth in Paragraph 7 herein.
2. Whenever an agency receives an application for approval or funding of an action or as early as possible in the agency's formulation of a direct action to be located in the Coastal Area, the applicant, or in the case of a direct action, the agency, shall prepare a Coastal Assessment Form (CAF) to assist with the consistency review of the proposed action.
3. The agency shall refer a copy of the completed CAF to the Committee within ten (10) days of its submission and prior to making its determination, shall consider the recommendation of the Committee with reference to the consistency of the proposed action.
4. After referral from an agency, the Committee shall consider whether the proposed action is consistent with the LWRP policy standards and conditions set forth in Paragraph 7 herein. The Committee shall require the applicant to submit all completed applications, CAFs and any other information deemed to be necessary to its consistency recommendation.
5. The Committee shall render its written recommendation to the agency within thirty (30) days following referral of the CAF from the agency, unless extended by mutual agreement of the Committee and the applicant or in the case of direct action, the agency. The recommendation shall indicate whether, in the opinion of the Committee, the proposed action is consistent with or inconsistent with one or more of the LWRP policy standards or conditions and shall elaborate in writing the basis for its opinion.

The Committee shall, along with its consistency recommendation, make any suggestions to the agency concerning modification, of the proposed action to make it consistent with LWRP policy standards and conditions or to greater advance them.

In the event that the Committee's recommendation is not forthcoming within the specified time, the referring agency shall make its decision without the benefit of the Committee's recommendation.

6. The agency shall make the determination of consistency based on the CAF, the Committee's recommendation and such other information as is deemed to be necessary in its determination. The agency shall issue its determination within thirty (30) days following receipt of the Committee's recommendation and submission by the applicant of any additional required information. The agency shall have the authority, in its finding of consistency, to impose practicable and reasonable conditions on an action to ensure that it

is carried out in accordance with this Local Law.

7. Actions to be undertaken within the Sag Harbor Coastal Area shall be evaluated for consistency in accordance with the following LWRP policy standards and conditions, which are derived from and further explained and described in Section III of the Village of Sag Harbor LWRP, a copy of which is on file in the Village Clerk's office and available for inspection during normal business hours. Agencies which undertake direct actions shall also consult with Section IV of the LWRP in making their consistency determination. The action shall be consistent with:

POLICY 1. FOSTER A PATTERN OF DEVELOPMENT IN THE VILLAGE OF SAG HARBOR THAT MAKES BENEFICIAL USE OF ITS COASTAL LOCATION, ENHANCES COMMUNITY CHARACTER, PRESERVES OPEN SPACE, MAKES EFFICIENT USE OF EXISTING INFRASTRUCTURE, AND MINIMIZES ADVERSE EFFECTS OF DEVELOPMENT.

- Policy 1.1 Sustain the pattern of existing land use which defines Sag Harbor as a historic port.
- Policy 1.2 Protect and enhance residential areas.
- Policy 1.3 Maintain and enhance natural areas, open space, and recreational lands.
- Policy 1.4 Ensure that development and uses make beneficial use of Sag Harbor's coastal location.
- Policy 1.5 Minimize adverse impacts of new development and redevelopment.

POLICY 2. SUSTAIN THE VILLAGE OF SAG HARBOR AS A CENTER OF MARITIME ACTIVITY AND SUITABLE LOCATION FOR WATER-DEPENDENT USES.

- Policy 2.1 Protect existing water-dependent uses.
- Policy 2.2 Allow for new commercial and recreational water-dependent uses in the *Waterfront Functional Area*, consistent with local zoning.
- Policy 2.3 Minimize adverse impacts of water-dependent uses and provide for their safe operation.
- Policy 2.4 Provide sufficient infrastructure for water-dependent uses.
- Policy 2.5 Promote efficient harbor operation.
- Policy 2.6 Participate in regional intermodal transportation activities that enhance maritime character and provide an alternative transportation method.

POLICY 3. PROMOTE SUSTAINABLE USE OF LIVING MARINE RESOURCES IN SAG HARBOR.

- Policy 3.1 Ensure the long-term maintenance and health of living marine resources.
- Policy 3.2 Provide for commercial and recreational use of finfish, shellfish, crustaceans, and marine plants.
- Policy 3.3 Promote recreational use of marine resources.

POLICY 4. MINIMIZE LOSS OF LIFE, STRUCTURES, AND NATURAL RESOURCES FROM FLOODING AND EROSION.

- Policy 4.1 Minimize losses of human life and structures from flooding hazards and erosion.
- Policy 4.2 Preserve and restore natural protective features.
- Policy 4.3 Protect public lands and public trust lands and use of these lands when undertaking all erosion or flood control projects.
- Policy 4.4 Manage navigation infrastructure to limit adverse impacts on coastal processes.
- Policy 4.5 Ensure that expenditure of public funds for flooding and erosion control projects results in a public benefit.
- Policy 4.6 Consider a sea level rise in the siting and design of projects involving substantial public expenditure.

POLICY 5. PROTECT AND IMPROVE WATER QUALITY AND SUPPLY IN WATERS OF THE VILLAGE OF SAG HARBOR.

- Policy 5.1 Prohibit direct or indirect discharges which would cause or contribute to contravention of water quality standards.
- Policy 5.2 Minimize nonpoint pollution of coastal waters and manage activities causing nonpoint pollution.
- Policy 5.3 Protect and enhance water quality of coastal waters.
- Policy 5.4 Protect and conserve the quality and quantity of potable water.

POLICY 6. PROTECT AND RESTORE THE QUALITY AND FUNCTION OF THE VILLAGE OF SAG HARBOR ECOSYSTEM.

- Policy 6.1 Protect and restore ecological quality throughout Sag Harbor.
- Policy 6.2 Development within or near the Sag Harbor and Northwest Harbor Significant Coastal Fish and Wildlife Habitat shall be sited so as not to impair the viability of the habitat.
- Policy 6.3 Protect and restore tidal wetlands.

POLICY 7. PROVIDE FOR PUBLIC ACCESS TO AND RECREATION OPPORTUNITIES ON WATERS, PUBLIC LANDS, AND PUBLIC RESOURCES OF THE VILLAGE OF SAG HARBOR LOCAL WATERFRONT REVITALIZATION AREA.

- Policy 7.1 Promote appropriate and adequate physical public access and recreation throughout the Village of Sag Harbor coastal area.
- Policy 7.2 Provide physical linkages between public parks, open spaces, public trust lands, and nearshore surface waters.
- Policy 7.3 Provide public visual access to coastal lands and waters or open space at all sites where physically practical.
- Policy 7.4 Preserve the public interest in and use of lands and waters held in public trust by New York State, Suffolk County, and the Towns of East Hampton and Southampton.

- Policy 7.5 Assure public access to public trust lands and navigable waters.
- Policy 7.6 Provide access and recreation which are compatible with natural resource values.

POLICY 8. PRESERVE HISTORIC RESOURCES OF THE VILLAGE OF SAG HARBOR.

- Policy 8.1 Maximize preservation and retention of historic resources.
- Policy 8.2 Protect and preserve archaeological resources.
- Policy 8.3 Protect and enhance resources that are significant to the coastal culture of Sag Harbor and the Peconic Bay area.

POLICY 9. ENHANCE VISUAL QUALITY AND PROTECT SCENIC RESOURCES IN THE VILLAGE OF SAG HARBOR.

- Policy 9.1 Protect and improve visual quality in the Village of Sag Harbor.

POLICY 10. PROTECT AND IMPROVE AIR QUALITY IN LONG ISLAND.

- Policy 10.1 Control or abate existing and prevent new air pollution.
- Policy 10.2 Limit discharges of atmospheric radioactive material to a level that is as low as practicable.
- Policy 10.3 Limit sources of atmospheric deposition of pollutants to the Long Island Sound and Peconic Bays, particularly from nitrogen sources.

POLICY 11. MINIMIZE ENVIRONMENTAL DEGRADATION IN THE LONG ISLAND COASTAL AREA FROM SOLID WASTE AND HAZARDOUS SUBSTANCES AND WASTES.

- Policy 11.1 Manage solid waste to protect public health and control pollution.
- Policy 11.2 Manage hazardous wastes to protect public health and control pollution.
- Policy 11.3 Protect the environment from degradation due to toxic pollutants and substances hazardous to the environment and public health.
- Policy 11.4 Prevent and remediate discharge of petroleum products.
- Policy 11.5 Transport solid waste and hazardous substances and waste in a manner which protects the safety, well-being, and general welfare of the public; the environmental resources of the State; and the continued use of transportation facilities.
- Policy 11.6 Site solid and hazardous waste facilities to avoid potential degradation of coastal resources.

8. If the agency determines that the action would not be consistent with one or more of the LWRP policy standards and conditions, such action shall not be undertaken unless the agency makes a written finding with respect to the proposed action that:

1. No reasonable alternatives exist which would permit the action to be undertaken in a manner which will not substantially hinder the achievement of such LWRP policy standards and conditions.

2. The action would be undertaken in a manner which will minimize all adverse effects on such LWRP policy standards and conditions.
3. The action will advance one or more of the other LWRP policy standards and conditions: and
4. The action will result in an overriding Village, regional or state-wide public benefit.

Such a finding shall constitute a determination that the action is consistent with the LWRP policy standards and conditions.

9. Each agency shall maintain a file for each action made the subject of a consistency determination, including any recommendations received from the Harbor Committee. Such files shall be made available for public inspection upon request.

VI. Enforcement:

The Village Building Inspector shall be responsible for enforcing this Local Law. No work or activity on a project in the Coastal Area which is subject to review under this Local Law shall be commenced or undertaken until the Village Building Inspector has been presented with a written determination from an agency that the action is consistent with the Village's LWRP policy standards and conditions. In the event that an activity is not being performed in accordance with this Local Law or any conditions imposed thereunder, the Village Building Inspector shall issue a stop work order and all work shall immediately cease. No further work or activity shall be undertaken on the project so long as a stop work order is in effect.

VII. Violations:

1. A person who violates any of the provisions of, or who fails to comply with any conditions imposed by this Local Law shall have committed a violation, punishable by a fine not exceeding five hundred dollars for a conviction of a first offense and punishable by a fine of one thousand dollars for a conviction of a second or subsequent offense. For the purpose of conferring jurisdiction upon courts and judicial officers, each week of continuing violation shall constitute a separate additional offense.
2. The Village Attorney is authorized and directed to institute any and all actions and proceedings necessary to enforce this Local Law. Any civil penalty shall be in addition to and not in lieu of any criminal prosecution and penalty. The Village may also enforce this Local Law by injunction or other civil proceeding.

VIII. Severability:

The provisions of this Local Law are severable. If any provision of this Local Law is found invalid, such finding shall not affect the validity of this Local Law as a whole or any part of provision hereof other than the provision so found to be invalid.

IX. Effective Date:

This Local Law shall take effect immediately upon filing with the Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.

APPENDIX A

COASTAL ASSESSMENT FORM

A. INSTRUCTIONS (Please print or type all answers)

1. Applicants, or in the case of direct actions (city, town, village) agencies, shall complete this CAF for proposed actions which are subject to the consistency review law. This assessment is intended to supplement other information used by a (city, town, village) agency in making a determination of consistency.

2. Before answering the questions in Section C, the preparer of this form should review the policies and explanations of policy contained in the Local Waterfront Revitalization Program (LWRP), a copy of which is on file in the (city, town, village) clerk's office. A proposed action should be evaluated as to its significant beneficial and adverse effects upon the coastal area.

3. If any questions in Section C on this form is answered "yes", then the proposed action may affect the achievement of the LWRP policy standards and conditions contained in the consistency review law. Thus, the action should be analyzed in more detail and, if necessary, modified prior to making a determination that it is consistent to the maximum extent practicable with the LWRP policy standards and conditions. If an action cannot be certified as consistent with the LWRP policy standards and conditions, it shall not be undertaken.

B. DESCRIPTION OF SITE AND PROPOSED ACTION

1. Type of (city, town, village) agency action (check appropriate response):

- (a) Directly undertaken (e.g. capital construction, planning activity, agency regulation, land transaction) _____
- (b) Financial assistance (e.g. grant, loan, subsidy) _____
- (c) Permit, approval, license, certification _____
- (d) Agency undertaking action: _____

2. Describe nature and extent of action: _____

3. Location of action: _____

4. Size of site: _____
5. Present land use: _____
6. Present zoning classification: _____
7. Describe any unique or unusual land forms on the project site (i.e., bluffs, dunes, swales, ground depressions, other geological formations): _____

8. Percentage of site which contains slopes of 15% or greater: _____
9. Streams, lakes, ponds or wetlands existing within or contiguous to the project area?
 (1) Name: _____
 (2) Size (in acres): _____
10. If an application for the proposed action has been filed with the (city, town, village) agency, the following information shall be provided:
 (a) Name of applicant: _____
 (b) Mailing address: _____
 (c) Telephone number: Area Code () _____
 (d) Application number, if any: _____
11. Will the action be directly undertaken, require funding, or approval by a state or federal agency?
 Yes ___ No ___ If yes, which state or federal agency? _____

C. COASTAL ASSESSMENT (Check either "Yes" or "No" for each of the following questions)

1. Will the proposed action be located in, or contiguous to, or have a potentially adverse effect upon any of the resource areas identified on the coastal area map: **YES NO**
 - (a) Significant fish or wildlife habitats? ___ ___
 - (b) Scenic resources of local or statewide significance? . ___ ___
 - (c) Important agricultural lands? ___ ___

- (d) Natural protective features in an erosion hazard area

If the answer to any question above is yes, please explain in Section D any measures which will be undertaken to mitigate any adverse effects.

2. Will the proposed action have a significant effect upon: **YES NO**

- (a) Commercial or recreational use of fish and wildlife resources?
- (b) Scenic quality of the coastal environment?
- (c) Development of future, or existing water dependent uses?
- (d) Operation of the State's major ports?
- (e) Land or water uses within a small harbor area?
- (f) Stability of the shoreline?
- (g) Surface or groundwater quality?
- (h) Existing or potential public recreation opportunities?
- (i) Structures, sites or districts of historic, archeological or cultural significance to the (city, town, village), State or nation?

3. Will the proposed action involve or result in any of the following: **YES NO**

- (a) Physical alteration of land along the shoreline, land under water or coastal waters?
- (b) Physical alteration of two (2) acres or more of land located elsewhere in the coastal area?
- (c) Expansion of existing public services or infrastructure in undeveloped or low density areas of the coastal area?
- (d) Energy facility not subject to Article VII or VIII of the Public Service Law?
- (e) Mining, excavation, filling or dredging in coastal waters?
- (f) Reduction of existing or potential public access to or along the shore?
- (g) Sale or change in use of publicly-owned lands located on the shoreline or under water?
- (h) Development within a designated flood or erosion hazard area?
- (i) Development on a beach, dune, barrier island or

- other natural feature that provides protection against flooding or erosion? — —
- (j) Construction or reconstruction of erosion protective structures? — —
- (k) Diminished surface or groundwater quality? — —
- (l) Removal of ground cover from the site? — —

4. PROJECT

YES NO

- (a) If a project is to be located adjacent to shore:
- (1) Will water-related recreation be provided? — —
- (2) Will public access to the foreshore be provided? — —
- (3) Does the project require a waterfront site? — —
- (4) Will it supplant a recreational or maritime use? — —
- (5) Do essential public services and facilities presently exist at or near the site? — —
- (6) Is it located in a flood prone area? — —
- (7) Is it located in an area of high erosion? — —
- (b) If the project site is publicly owned:
- (1) Will the project protect, maintain and/or increase the level and types of public access to water-related recreation resources and facilities? — —
- (2) If located in the foreshore, will access to those and adjacent lands be provided? — —
- (3) Will it involve the siting and construction of major energy facilities? — —
- (4) Will it involve the discharge of effluents from major steam electric generating and industrial facilities into coastal facilities? — —
- (c) Is the project site presently used by the community neighborhood as an open space or recreation area? — —
- (d) Does the present site offer or include scenic views or vistas known to be important to the community? — —
- (e) Is the project site presently used for commercial fishing or fish processing? — —
- (f) Will the surface area of any waterways or wetland areas be increased or decreased by the proposal? — —
- (g) Does any mature forest (over 100 years old) or other locally important vegetation exist on this site which will be removed by the project? — —
- (h) Will the project involve any waste discharges into

- coastal waters? — —
- (i) Does the project involve surface or subsurface liquid waste disposal? — —
- (j) Does the project involve transport, storage, treatment or disposal of solid waste or hazardous materials? — —
- (k) Does the project involve shipment or storage of petroleum products? — —
- (l) Does the project involve discharge of toxics, hazardous substances or other pollutants into coastal waters? — —
- (m) Does the project involve or change existing ice management practices? — —
- (n) Will the project affect any area designated as a tidal or freshwater wetland? — —
- (o) Will the project alter drainage flow, patterns or surface water runoff on or from the site? — —
- (p) Will best management practices be utilized to control storm water runoff into coastal waters? — —
- (q) Will the project utilize or affect the quality or quantity of sole source or surface water supplies? — —
- (r) Will the project cause emissions which exceed federal or state air quality standards or generate significant amounts of nitrates or sulfates? — —

D. REMARKS OR ADDITIONAL INFORMATION: (Add any additional sheets to complete this form.)

If assistance or further information is needed to complete this form, please contact (city, town, village) clerk at _____

Preparer's Name: _____ Telephone Number: () _____

Title: _____ Agency: _____

Date: _____